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Supreme Court of the United States

OCTOBER TERM, 1964

No. 4

JIM GARRISON,

Appellant

versus

STATE OF LOUISIANA,

Appellee

On Appeal from the Supreme Court of Louisiana

SECOND SUPPLEMENTAL BRIEF FOR APPELLANT (ON REARGUMENT)

Eberhard P. Deutsch,
Attorney for Appellant

Deutsch, Kerrigan & Stiles,
René H. Himel, Jr.,
Louis P. Trent,
Of Counsel

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Appellant adopts, as his briefs on reargument, his original and supplemental briefs (the latter discussing the impact on this case of this Court's opinion in *New York Times vs Sullivan*) heretofore filed herein, together with this second supplemental brief.

In addition to the materials cited in the previous briefs, the Court's attention is directed to the recognition accorded, even by the dissenting Justices in the obscenity cases which this Court decided on June 22, 1964, to the right of trial by jury in criminal prosecutions for speech or writing, and to the special importance of preserving political criticism in particular from any suppressive form of governmental interfer-

ence. *Jacobellis vs Ohio* 84 S.Ct. 1676, 1685 (Warren, CJ, dissenting); *A Quantity of Books vs Kansas*, 84 S.Ct. 1723, 1733 (Harlan, J, dissenting).

Irving Brant's careful scholarship has very recently revealed the fragile basis for any assumption that the English law of seditious libel derives from the common law; and has demonstrated that "what is called today the common-law doctrine of seditious libel is in fact the creation of the Court of Star Chamber, the most iniquitous tribunal in English history". *Seditious Libel: Myth and Reality*, 39 New York University Law Review 1, 5 (1964).

Brant rightly concludes that the First Amendment was designed, not to codify any part or aspect of the English or Blackstonian rule that liberty of the press consisted in its freedom from previous restraint, but to reject and repudiate any restrictions whatever on freedom of expression, including at the least, all prosecutions for criticism of government and its officers. Id., 16-19.*

Conclusion

The Star Chamber policy underlying criminal prosecutions for criticism of judges was candidly expressed by the Judge (Lord Ashurst) who sentenced Lord George Gordon, in the same year in which the American Constitu-

* "The past damage and future danger lie not in the repudiated doctrine of previous restraint, but in the acceptance of the idea that *any* abridgment of freedom is permitted by an article of the Constitution that says there shall be *no* abridgment." Id., 19.

tion was written: "It highly concerns the good of the community, that the dignity of the (judicial) station should be vindicated against the attempts of wicked and evil-minded people, who, by endeavouring to depreciate the characters of those who are intrusted with the administration of the laws, hope by degrees to bring the law itself into contempt and abhorrence; and to sap and undermine the foundation of all order and government." 22 Howell's State Trials 175, 232-33 (1787).

Twenty-one centuries earlier, Socrates answered his judges, after they had condemned him to death as the "gadfly given to the state by God", by saying: "If you think that by killing men, you can prevent someone from censuring your evil lives, you are mistaken. . . . The easiest and the noblest way is not to be disabling others, but to be improving yourselves." *Dialogues of Plato* (Green ed.) pp. 5 *ff.*

It now lies with this Court to say whether the latter statement, although so far removed in time, is not closer to the spirit of the men who wrote the First Amendment, than the eighteenth-century views of the English judiciary, repudiated by the Founding Fathers.

Eberhard P. Deutsch,
Attorney for Appellant

Deutsch, Kerrigan & Stiles,
René H. Himel, Jr.,
Louis P. Trent,
Of Counsel

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